

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 4, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJR 6, SB 271, SB 245,
1/26/1999
Executive Action: None.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 45}

HEARING ON SJR 6

Sponsor: SEN. STEVE DOHERTY, SD 24, Great Falls

Proponents: Don Judge, Executive Director, AFL-CIO
Pam Driscoll, Representing Self
Scott Hanson, Hotel & Restaurant Employees' Union
Rex Kendall, International Brotherhood of
Electrical Workers (IBEW)
Ron Brothers, Representing Self, Kalispell
Colleen Barclay,
Bob Ream, Chairman, Montana Democratic Party
Chet Kinsey, Montana Senior Citizen Association
Harry Grove, Flathead Area Control Labor Council

Opponents: None.

Informational Testimony: Riley Johnson, National Federation of
Independent Business (NFIB)

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, Great Falls, said he is bringing this joint resolution because he is the grandson of a boiler maker and a brother of a railroad engineer. In his family, unions had been a strong presence. He believes that presence has worked to the betterment of his family and his community. He also believes it is time that Montanans adopt a positive statement about people's right to organize in the State of Montana. It is time because of the attempts of people to organize the purposes of collective bargaining, often in outright opposition. We need to let people in Montana know we are open for business and part of that business is good-paying jobs. The historical trend has gone downward in terms of Montana's per capita income to the point that we are now 51st behind the District of Columbia. That could be correlated with the decrease in union jobs in Montana. Union jobs bring union wages, respect, and sustainable, livable opportunities for Montanans. He believes this resolution is necessary now to make a positive statement to Montanans and for Montana's working people. They believe in the right to organize.

Proponents' Testimony:

Don Judge, Executive Director, Montana State AFL-CIO, stated there are 40,000 union households in the State of Montana in support of SJR 6. **EXHIBIT(1as28a01), EXHIBIT(1as28a02)**

Pam Driscoll, Representing Self, Whitefish, said she lost her job while attempting to organize a union. Although she remained on the schedule, she hasn't worked a shift in over two years. After eight years of waiting tables at Grouse Mountain Lodge, she and a group of co-workers decided to make some changes or quit. They decided to remedy the unfair working conditions they had spent years complaining about. Within the state law, they found out they had no protection other than Unemployment and Workers' Compensation Insurance. The Labor Department told them in order to get the kind of protection they were looking for, they needed a union. They investigated and within a week the Hotel & Restaurant Employees' Union arrived.

That was September, 1995. They organized a group of employees in March of 1996 representing over 30, which was a majority of the workers, who had a signed petition asking the owner to please respect their right to organize as guaranteed under the National Labor Relations Act and to sign a neutrality agreement affirming his intentions. He refused and began a union bussing campaign which is still continuing today. During the anti-union campaign, many unfair labor practices were filed. They repeated their request for neutrality to community leaders, religious leaders, and political leaders. In September, 1997, an administrative law judge ruled that Grouse Mountain Lodge had engaged in serious unfair labor practices which included intimidation and harassment. To date, there are only four of the original committee people left working at this lodge. Worker's rights are not respected in the Flathead nor in the State of Montana. On behalf of the workers, she asked the Committee to send the message this is not okay, but in violation of the law.

Scott Hanson, Hotel Employees & Restaurant Union Employees, stood as a proponent. **EXHIBIT(las28a03), EXHIBIT(las28a04)**

Rex Kendall, International Brotherhood of Electrical (IBEW), Local #44, Helena, said last year he was fired from his job as Capitol Correspondent for KULR 8 Television and KFBB Television for trying to form a union with broadcast employees from other stations. He made \$16,000 per year at KULR 8, which breaks down to around \$800 per month after taxes and money for health insurance was taken out of his check. He used his own vehicle as a news car and was never reimbursed for anything. His job was typical for all journalists throughout the state. They held an informal meeting in the basement to discuss forming a union. Their employers found out about it and they were all fired. He got pamphlets from IBEW, Local #44 on organizing. Their employers found out the next day, and he was fired about a week later, two weeks after a co-worker was fired. He then went to work full time as a union organizer. He has been successful in

winning union elections in five stations around the state. The majority of Montana's television stations are owned by large, out-of-state companies.

These companies, along with their union, the Montana Broadcaster's Association, have mounted a nasty anti-union campaign at considerable expense. They have hired attorneys to spread lies and disinformation among employees, and they have hired so-called 'union labor negotiators' to fight every effort of fair contracts. Their transgressions of the law are lengthy.

Mr. Kendall read the Montana Broadcaster's Association mission statement, which sound like a union mission statement. He said they are organized, have a lobbyist, and have more money than the unions do. He then read memos from different radio stations which put down union membership and stated it is okay for them to have a union, but it is not alright for their employees to have a union.

Ron Brothers, Representing Self, Kalispell, reported his wife was working for Heritage Place, an Atlantis Corporation in Kalispell, Montana for six months. In the last month of her employment, she tried to organize with several employees of the Heritage Place. She was involved in a motor vehicle accident and on that same day she told her employer she would not be into work due to the fact her vehicle was damaged and also because of her emotional stability at that time. She was fired and after that they tried to go to court. She actively sought re-employment at Heritage Place and worked extensively after that trying to help other employees to unionize.

Atlantis continued to make it difficult for her and Mr. Brothers, calling his place of employment, telling his employer they would seek lawsuits against him for trying to organize at Atlantis. His employers supports unions. This issue is his wife was harassed and they had to take this to a hearing. The officer found in her favor. They appealed it again and made it tough for her again, they went back to court and the court found in favor of her again. She was finally awarded her unemployment. His family has suffered through this and his wife is currently employed and doing well with a very good employer. He hopes the Committee will give the people of Flathead Valley and the State of Montana the chance to organize.

Colleen Barclay, Hotel Employees & Restaurant Employees, testified her story is a happy one. She said she makes a living wage and is also able to get medical and dental benefits and paid holidays. She is a union worker and has been for five years.

Bob Ream, Chairman of the Montana Democratic Party, stated they support SJR 6. In 1981 the Missoula High School Board carried on a labor dispute with the teachers. With taxpayer dollars they hired a union-busting company in Minnesota to come in and try to drive a wedge in the union. He formed a citizen group which put an end to that strike and also to the union-busting activities of the school board. That shameless action of using taxpayer dollars by the board should not happen again in the State of Montana. The growing disparity of the wealthy in this country and the workers is going to lead to a lot more union organizing.

Chuck Kenzie, Montana Senior Citizen's Association, supports this bill. Before he came to Montana during the depression, it was very noticeable through Ohio and Michigan, that the union towns were suffering much less.

Harry Grove, Columbia Falls, Vice President, Flathead Control Labor Council, supports SJR 6. He has seen turmoil in the community from union organization and they administer jobs for fired workers.

Opponents' Testimony:

None.

Informational Testimony:

Riley Johnson, Montana Broadcaster's Association, asked to go on record that they are not a union and they have never participated in any interference of any broadcasting members.

Questions from Committee Members and Responses:

CHAIRMAN KEATING asked **SEN. DOHERTY** if there were any laws in Montana against organization.

SEN. DOHERTY said that is true.

CHAIRMAN KEATING mentioned the National Labor Relations Act (NLRA) is a federal law to which all the employers in the State of Montana are subject to. If there are illegal practices under that law he asked **SEN. DOHERTY** if they come before the National Labor Relations Board.

SEN. DOHERTY said they do, but he thinks the testimony from these people was that the NLRB is broken. It takes years to get a resolution and it isn't working.

CHAIRMAN KEATING asked since the NLRB operates under federal law, if they favor the employer and if that is why the employees are not getting redress under the law or is it that they are applying the law equally to both sides?

The question was deferred to **Don Judge** who responded the NLRB is suppose to be a neutrality act which authorizes workers in the private sector to organize. The truth is the penalties which are imposed under the act are not sufficient to cause employers not to act illegally against employer's right. If an employer violates a worker's rights by terminating that worker, the worker's right to recovery for the wrongful termination is limited to wages lost minus any unemployment compensation and minus any other wages which that employee many have earned during that period of unemployment. The NLRB has no authority to impose a fine against employers for acting illegally, they can only slap their wrists. It is an act only on the books.

Scott Hansen declared his employers are covered by the National Labor Relations Act (NLRA) in Montana. It is not true that all employers are covered by that act. There are certain requirements for an employer to be covered by the NLRA in Montana. Employees in an establishment that does less than \$500,000 per year in commerce are not considered employees under the NLRA. If you work in a small shop and try to organize a union, it is perfectly legal for the employer to fire those employees.

SEN. BILL WILSON asked **Rex Kendall** to expound again on how he was fired.

Mr. Kendall reported he had a meeting in the basement to organize a union. He got pamphlets from the Local IBEW #44 on organizing. He passed these pamphlets out to those people and his employer found out the next day about this meeting. He was fired about a week after that, about two weeks after that they fired a co-worker. They filed charges with the National Labor Relations Board, who called several people and got statements from those involved and decided they did not want to file a complaint. One of the other co-workers was fired on exactly the same day for having a bad attitude.

SEN. WILSON asked if the grounds for his firing were explicitly stated that it was for organizing, and if there were extraneous reasons that they fired them.

Mr. Kendall answered they came down a week later and said they didn't like anything he did. Until that time, he was their fair-haired boy. He had worked in the broadcast industry for 12 years

and had never been fired from a job, had recommendations from people from all facets of the industry. He had never been treated that way before. He said people have been fired, disciplined, verbally abused, etc., lots of stories of harassment.

Closing by Sponsor:

SEN. DOHERTY closed by saying this is reality. These folks didn't make this stuff up. They got the short end of the stick. They have a right which is being thwarted in the State of Montana. They can file a claim with NLRB, and after a few years of unemployment and finding another job, what will happen? There are no fines, there is no recourse, there is no justice. He understands there are contentious and hard issues to talk about between the balance between an employer and employee's rights. What these folks are telling you is the balance is out of whack, and their rights have been trampled on and they haven't had a recourse. One of the things we need to do in the State of Montana is stand up and say for the folks who want to organize and bargain collectively is okay. He believes there are valid reasons to do that economically and also for social justice.

{Tape : 1; Side : B; Approx. Time Counter : 41 - 44} We increase the voter's frustration with government. We need to pass this resolution.

{Tape : 1; Side : B; Approx. Time Counter : 45 - 83}

HEARING ON SB 271

Sponsor: SEN. MIKE TAYLOR, SD 37, Proctor

Proponents: SEN. DUANE GRIMES, SD 20, Clancy
Riley Johnson, National Federation Independent
Business, (NFIB)
Chris Gallus, Montana Chamber of Commerce
John Sullivan, Representing Self, Helena
Jim Nys, Society Human Resource Management
Charles Brooks, Billings Chamber of Commerce
Steve Wade, Montana Municipal Insurance Authority
Deb Kottell, D.A. Davidson
Janet Stice, Representing Self, Big Sky Ski Resort
Dean Randash, NAPA Auto Parts
Bob Pyfer, Montana Credit Union League
Brad Griffin, Montana Retail Association
Rose Hughes, Montana Health Care Association

Opponents: **Gene Fenderson, Montana Heavy & Highways**
 Al Smith, Montana Trial Lawyers' Association
 Don Judge, AFL-CIO

Opening Statement by Sponsor:

SEN. MIKE TAYLOR, SD 37, Proctor, brought SB 271 before the Committee for their consideration. This bill provides for limits of liability for employer who disposes information about a former and current employee regarding an employee related to performance. This bill will help with honesty and free speech to prevail. An error does not become a mistake until you refuse to correct it. This is an employee's bill first, and an employer's bill second. Without this legislation an employee is put under a cloud as a businessman. When an employer begins the hiring process and he cannot get a reference, only the dates regarding when they were hired and when they were terminated, there is an indecision regarding the employee which leads to a probation period which the employee is placed under. Secondly, salary consideration is not the same. Experts believe 20% to 25% of all resumes' have some form of error or dishonesty. Senate Bill 270 will reduce legislation faced by employees who are honest. He said there are amendments and would appreciate consideration of those.

Proponents' Testimony:

SEN. DUANE GRIMES, SD 20, Clancy, stated this bill is one of those tools we can use to improve the business climate in this state. The way the bill is drafted is very balanced and doesn't allow for problems that some legislation of this nature may suggest. An amendment possibly brought forward by the Department of Administration is a great addition to the bill. He encouraged careful consideration of this bill.

Riley Johnson, National Federation of Independent Business, (NFIB), was present to support SB 271. Fear and litigation currently prevents people from telling the truth about their peers, associates, and employees. Reference checks have become a universal problem of bad checks. The problem even affects all who might fly on an airplane or have children cared for by non-family members and anyone who relies on other people for job performance. For example, the National Transportation Safety Board generated publicity several years ago with finding about an American Eagle Airline crash in North Carolina. Press reports have suggested that many people at another computer airline were uncomfortable with the cockpit skills, however, nobody told American Eagle during reference checks.

The prior employee standard response for employment history would not have included meaningful information on training and flight proficiency despite the availability of such data. On board that American Eagle, the captain had failed to follow established procedures on a flight in which he co-piloted. Thirteen passengers died. Similar situations are rampant all over the country. A study of 571 sex offenders funded by the National Institute of Mental Health found that the typical offender molests an average of 117 children before being stopped. The report concludes that those who know do not tell until litigation. Businesses at risk include rest homes, day care centers, main street businesses which deal in cash and credit cards and other sensitive work places. In Montana we have our share of all of those. Many employers today have adopted, the 'name, rank, and serial number' approach for gathering information about former employees. An employer has nothing to gain and a law suit to loose by giving complete and full references. The California Supreme Court upheld a third party suit based on one employer, who happened to be a school district, suing another employer, who happened to be two other school districts, for giving the second employer a misleading reference on a former employee.

This was a sex case and the Supreme Court upheld the one employer suing the other. This does not just lead to the fear of a former employee suing but also it can be another employer. We need this legislation to protect those who furnish useful information in good faith at the specific request of a perspective new employer. Thirty other states now have such legislation, including our own immediate neighbors of North and South Dakota, Wyoming and Idaho. In 1997 the NFIB surveyed their members on limited employer immunity, and 87% favored legislation which is the same of SB 271. Also, former employers would make references, not only to bad employees but to the good employees as well. He asked for a "do pass" of SB 271.

EXHIBIT(las28a05)

Chris Gallus, Montana Chamber of Commerce, informed the Committee they support SB 271. Certainly Montana employers need the ability to share accurately, reliable and truthful information.

EXHIBIT(las28a06) **Mr. Gallus** explained the amendment he proposed.

John Sullivan, Representing Self, Helena, handed out proposed amendments to the bill. **EXHIBIT(las28a07)** He has spent most of his life practicing law and representing employers and 60% of his practice is spent doing employment work, which he has done for the past 20 years. This is a short bill which deals with a complex subject matter in the law of liable and slander. The

intent behind this bill is a very good one. The area of complexity deals with the 'law of privilege' in liable and slander. He read Section 27-1-804 (3), MCA, which deals with liable and slander. He then stated no one can understand the law the way it is written. The provision embodies two provisions in the liable and slander law. One is a conditional privilege or the interest privilege. The other is an absolute privilege which is granted by the consent of the parties. In this bill he said he tried to preserve the law which relates to those privileges as they would apply here and to take subsection 3 of the liable and slander law and translate it so it clearly applies in the employment arena in which this bill is attempting to operate. A conditional privilege can be lost if it is abused. It is abused if you say something you know to be false, or you say something false and operate with reckless disregard for the truth. That is what he tried to put into the amendment. **EXHIBIT(1as28a08)** is the documentation of a Supreme Court case. Many times in the real world, the manner in which references are given is only when the employee consents to allow the former employer to speak. When that happens the employer is recognized by law to have an absolute privilege to speak and cannot be sued. This bill, if passed, would be allowed to be read by both employers and employees and both would understand the rules applied to employment preferences.

Jim Nys, Society for Human Resource Management testified in favor of SB 271. **EXHIBIT(1as28a09)**

Charles Brooks, Billings Chamber of Commerce, said they stand in strong support of SB 271. As a former businessman, he gave only dates of employment when reference checks were called because of the threat of lawsuits.

Steve Wade, Montana Municipal Insurance Authority, supported Senate Bill 271.

Deb Kottell, D.A. Davidson, stands in strong support of SB 271 along with the presented amendments. They believe this bill provides for community truth, helps stop the effect lawsuits have on our community, and also, it does not provide any support of an employer who black-lists, nor such information to those who are not an interested recipient.

Janet Stice, Human Resource Manager, Big Sky Ski & Summer Resort, also supported SB 271. **EXHIBIT(1as28a10)**

Dean Randash, NAPA Auto Parts, handed in written testimony supporting SB 271. **EXHIBIT(1as28a11)**

Bob Pyfer, Montana Credit Union League, said they would like to go on record in support of this bill.

Brad Griffin, Montana Retail Association, supports the bill.

Rose Hughes, Montana Health Care Association, also supports Senate Bill 271.

Opponents' Testimony:

Gene Fenderson, Montana Joint Heavy & Highway Committee, stood in opposition to this bill. He stated both sides are not always truthful in employment offers or in the employment they may receive. He heard testimony before this hearing that employers are saying untruthful comments which are being carried to the limit. With the black-list law, we are letting one side have no torte, but the other side having it all. That is not labor and management cooperation nor equalization. He asked for a 'do not pass'.

Al Smith, Montana Trial Lawyers' Association, said he has been on both sides and understands the problem. He has been the employer and has given only the dates of employment. He has also called about an employee and gotten the same response. He developed a form which is a written authorization from a respected employee or former employee, authorizing this information to be discussed. That takes care of the problem very efficiently. He believes this bill is too broad and goes beyond what is necessary for the employers to get what they need out of it. It also opens things up for abuses of employees.

Don Judge, Montana State AFL-CIO, said he felt disadvantaged by the fact he has not seen amendments. **Mr. Judge** stated he is not only a representative of 42,000 working families, but he is also an employer. He has 22 employees and has had the circumstances of not wanting to be totally truthful about an employee's performance when he has been contacted by an employer. In using a form, he is able to give the employer a good sense about the employee without being untruthful. One of the questions is, "would you ever re-hire them?" If he checked 'no', he did not have to explain why not, but that is a pretty clear message. This is already done as an employer and you do not put yourself in jeopardy of lawsuit of an employee because you haven't lied. He said he also understood the reluctance of employers to risk information. However, as written, this bill becomes a very one-sided mechanism which can be used to harass employees. What prevents an employer from saying they got rid of an employee for trying to organize a union? There is nothing in law which states an employer can't tell someone else the employee was trying to

organize a union. We need a balance in the law which protects worker's rights as well as employer's rights and as written, Senate Bill 271 does not do that.

Questions from Committee Members and Responses:

SEN. SUE BARTLETT asked **John Sullivan** if the amendment he proposed which states, "the presumption of good faith may be rebutted only by clear and convincing evidence of one or two things" why the standard of evidence is clear and convincing?

Mr. Sullivan responded it comes from New York Times vs. Sullivan. He said this is complex liable and slander law. You could talk about this for two hours. The qualified privilege, which is knowing disregard for the truth, is called 'what malice means' from New York Times vs. Sullivan in a defamation case. The word 'malice' is in the Montana Statute today. The standard of proof is clear and convincing, which is a requirement from New York Times vs. Sullivan to overcome a qualified privilege.

SEN. BARTLETT asked if he would give an example of how one could rebut the presumption of good faith.

Mr. Sullivan responded if you demonstrated that the employer gave false information and it has to be false. That's the basis for a liable and slander case.

Closing by Sponsor:

SEN. TAYLOR closed by explaining he believes this is an employee's bill as well as an employer's bill. It returns some common sense to the process. **{Tape : 2; Side : A; Approx. Time Counter : 79 - 110}** The litigation and the cost of insurance today is passed on to the consumer in the form of services and goods, to the cost of 30% to 35%. When we correct this situation with this legislation we will remove some of those problems. This will also end some of the welfare for the law profession in this field. It does not take away from the rights of the individual to seek recourse. This also regains our freedom of speech. He urged a 'do pass' on this bill and agrees with the amendment.

{Tape : 1; Side : B; Approx. Time Counter : 83 - 109}

HEARING ON SB 245

Sponsor: **SEN. MIGNON WATERMAN, SD 26, Helena**

Proponents: **Ralph Andrews, Representing Self**
 Vicki LaFond Smith, Representing Self
 Cindy Mercier, Representing Self
 Erin White, Representing Self
 Brett Spaulding, Representing Self
 Mike Chaffin, CEO Ravalli Services Corporation
 Alve Thomas, American Association of Retired
 People
 Maggie Bullock, Department of Health & Human
 Services
 John Andrew, Department of Labor & Industry
 Wally Melcher, Developmental Disabilities
 Systematic Committee, (DDSAC)

Opponents: **None.**

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, opened by stating SB 245 is a request for an exemption from the state minimum wage and overtime laws for employees who are engaged in domestic service employment to provide health companionship individuals, who because of age or infirmity, are unable to care for themselves. The Federal Fair Labor Standards Act requires minimum wage and overtime pay exemptions for employees who provide companionship services. The eligibility exemptions is applicable only for employees who reside in the home with the person who is receiving the services. Companionship services do not include trained personnel services such as services by Registered or Practical Nurses.

Proponents' Testimony:

Ralph Andrews, Representing Self, asked that the Committee pass this bill to help the handicapped.

Vicki LaFond Smith, Representing Self, stood in support of this bill. **EXHIBIT**(las28a12)

Cindy Mercier & Carl Kershner, Representing Selves, supported this bill. **(Mr. Kershner was handicapped so Ms. Mercier read his testimony).** He said he would like to be able to pick out and buy my own clothing and would like to be able to cook what he wants. Also, he would like to be able to live with someone not so fussy. He didn't want to live alone and someday would like to get married. **Ms. Mercier** said as one of Carl's staff members she is asking for the passage of SB 245. She believes this will help

Carl achieve his independence. He needs to be able to make his own personal choices which he can do every day.

Erin White, Representing Self, explained she is caring for Misty, a non-verbal, non-ambulatory woman. Misty has her own house but requires a companion. Her family has made it possible for Misty to stay in this house, however, these arrangements are coming to an end. **Ms. White** said she would like to become a companion and move in with Misty so Misty can have a family environment. Her husband was raised by his grandmother and has been in a wheel chair for ten years. He is well-aware of what is required for caring for someone in a wheel chair. Her daughter loves Misty and Misty has even become comfortable enough to let her ride on her lap. They enjoy doing things as a family and hope they can make her feel as welcome as her own children. Being a companion to Misty will allow **Ms. White** to be home with her children. Misty could provide them with a beautiful and comfortable, larger house and they could provide her with the warmth and love of a solid family environment. She encouraged the passage of SB 245.

Brett Spaulding, Representing Self, spoke in support of this companionship bill because it will enhance the lives of persons he serves. They could have more options available to them and, also, this bill could open up the long waiting list of persons with developmental disabilities. Rather than live in group homes or institutions, they could live in good homes.

Mike Chaffin, CEO Ravalli Services Corporation, said this bill will enable them to have one more resource for options for people with disabilities to avoid more restrictive living arrangements. This would give them another tool to help these people to remain in their own homes and apartments, also to reside with their own families.

Alve Thomas, American Association of Retired People, (AARP), informed the Committee they are in favor of this bill and hope it is passed.

Maggie Bullock, Department of Health & Human Service, strongly urged the support of SB 271.

John Andrew, Department of Labor & Industry, stated as the Committee is aware of the minimum wage and overtime laws, there is a lot of amendments which have gone to overtime. One of the primary purposes for that is to make the state law consistent with the federal law. This bill accomplishes that. Also, over the years on an occasional basis they get a complaint which comes in from somebody who has gone to work in one of these homes on a 'hand shake' arrangement. There are no records nor formal

employment status and somewhere along the line they are faced with a sudden claim for minimum wage and overtime over a two or three year time period. No one intended for it to happen, but it did. When the individual who has hired that person to help, this bill will alleviate that difficulty.

Wally Melcher, Developmental Disabilities Systematic Committee, (DDSAC), stated he believes this bill opens options for people with disabilities that move in the direction philosophies are trending these days. People should have their own homes and enjoy the comforts, securities and privacies. They simply need a little bit of help.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

CHAIRMAN KEATING asked if the folks which will benefit from this companionship are people who are living by themselves, and at some point if they have these services their independent living is extended and this keeps them from being institutionalized?

SEN. WATERMAN responded this is true. **Ralph Andrews** was placed in, what was then, the Boulder River Hospital when he was five years old and spent 50 years institutionalized. He goal has always been to have a place of his own. He struggled, not only in finding affordable housing which he now has in Red Lodge, but also somebody to support him and live with him. What he wants is a companion and this will allow him to live independently.

SEN. BILL WILSON asked if we intend to pay wages and, if so, what range? What is an ideal companion situation?

SEN. WATERMAN answered that depends upon the circumstances. The person will reach an arrangement with the companion to figure out what is affordable and what services they want, etc. This will be an exemption from Wage and Hour so someone cannot come back later to say they were there 24 hours per day and should be paid for that.

SEN. WILSON asked what type of profession or qualifications are required for the companion?

SEN. WATERMAN responded we are not talking about skilled nursing services. They will be people who will help with those daily living tasks, including dressing, bathing, cooking meals, just companionship. There is a limitation on what they can do, such as light housekeeping. They are not there as a cleaning service nor a registered nurse.

SEN. WILSON asked if this could be used to infringe or diminish wages paid to someone who typically already does this? Also, will we get caught in the crossfire by someone who already holds a job who lives with someone who is disabled?

John Andrew reported the people who are trained professionals are not going to be excluded. There is nothing technical about this bill. The intention is there is some sort of arrangement with a payment made to the companion which doesn't have to be a minimum wage or overtime standard.

SEN. WILSON remarked he noticed in the title, "domestic service employment" and he thinks that is pretty broad.

Mr. Andrew explained the term "domestic service employment" has a particular meaning in the Fair Labor Standards Act which distinguishes it from companionship services. The domestic servant is the person who is hired as a housekeeper and that type of thing, and they would not be exempted but entitled to minimum wage. It is the true companion who would be exempted from both minimum wage and overtime.

CHAIRMAN KEATING mentioned on page 2, line 24, is the federal law that defines what is being dealt with and they will have copies of that during executive action on this bill.

Closing by Sponsor:

SEN. WATERMAN closed by explaining we used to have relatives and friends and neighbors who used to help these people out. As we have gotten into requirements for Wage and Hour, we have protected people to make sure no one takes advantage of them, but we have also left some individuals with the inability to get anyone to help them, forcing them into group homes and confined living. She urged a "do-pass" of **SB 271**.

ADJOURNMENT

Adjournment: 4:58 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las28aad)